The Planning Inspectorate

Appeal Decision

by M Seaton BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 June 2020

Appeal Ref: APP/M4320/W/20/3247071
44 Hartwood Road, Southport, Merseyside, PR9 9AW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mrs Tiffany Donaldson against the decision of Sefton Metropolitan Borough Council.
- The application Ref DC/2019/01518, dated 20 August 2019, was approved on 23 December 2019 and planning permission was granted subject to conditions.
- The development permitted is a change of use of part of the garden to a Cattery at the rear of the dwellinghouse along with the retention of 5 (five) detached wooden structures to be used in connection with the cattery.
- The condition in dispute is No. 5 which states that:
  Notwithstanding the provisions of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (or any Regulations revoking and/or reenacting those Regulations with or without modification), no signage shall be erected on the front or side elevations of the dwellinghouse, the front garden or the front boundary wall to Hartwood Road.
- The reason given for the condition is:
  In the interests of the residential character of the area.

Decision

1. The appeal is allowed and the planning permission Ref DC/2019/01518 for a change of use of part of the garden to a Cattery at the rear of the dwellinghouse along with the retention of 5 (five) detached wooden structures to be used in connection with the cattery at 44 Hartwood Road, Southport, Merseyside, PR9 9AW granted on 23 December 2019 by Sefton Metropolitan Borough Council, is varied by deleting Condition No. 5.

Procedural Matter

2. In response to travel restrictions due to the COVID-19 pandemic I consider that this appeal can be determined without the need for a physical site visit. This is because I have been able to reach a decision based on the information already available. Both the appellant and the Council were given an opportunity to provide comments on this approach and I have taken any responses into account.

Background and Main Issue

3. Planning permission has been granted for use of the part of the rear garden of the appeal site as a cattery, subject to a number of conditions. These conditions include a restriction preventing the display of advertisements as otherwise allowed by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (the Advertisement Regulations)

on the front or side elevations of the appeal property, or within the front garden or on the front boundary wall.

4. The appellant contends that the imposition of such a restriction is unfair as it would make it more difficult for customers to know they have arrived at the correct place and would remove the potential for the benefits of passing trade. Furthermore, it is claimed that such a stance would be inconsistent with the approach taken to signage for other businesses on the road as well as in respect of a general absence of such restrictions for other catteries within the Southport area where signage is visible. The appellant therefore wishes to see the removal of the condition.

5. In light of the reason provided for the imposition of the disputed condition, the main issue is whether the condition is reasonable or necessary having regard to the effect on the character and appearance of the area.

Reasons

6. The Planning Practice Guidance and paragraph 55 of the National Planning Policy Framework make it clear that planning conditions should only be used where they satisfy 6 tests. These tests include whether a condition would be necessary and relevant to planning, and the imposition of planning conditions must be made on the basis that they relate to planning objectives and be within the scope of the planning permission to which they relate.

7. The Planning Practice Guidance also sets out that conditions requiring compliance with other regulatory requirements that are subject to other primary legislation, such as the environmental protection, building control or highways acts, must not be used. Furthermore, conditions must not be used to control matters that are subject to separate planning regulations, such as advertisement control or tree preservation.

8. In this instance, a condition seeking to remove the ability to display advertisements in connection with the approved business enterprise as permitted by the Advertisement Regulations would clearly fall foul of the test regarding relevance to planning being controlled by another regulatory regime. The condition would also seek to impose control beyond the scope of the planning permission as granted and would not therefore be necessary in order to ensure that the planning permission as approved would be acceptable.

9. I am mindful that if the Council conclude that there is a need for the control of advertisements at the appeal site, then this should have been secured through the Advertisement Regulations rather than by the imposition of a planning condition. If a local planning authority considers it necessary to restrict deemed consent in a particular area, the Planning Practice Guidance advises it must apply to the Secretary of State for the issue of a direction under Regulation 7 that requires express consent to be obtained for advertisements that normally benefit from deemed consent. This avenue would appear to remain available to the Council if the continued need to exercise control is deemed to be necessary.

10. For the reasons set out, I conclude that the condition would not satisfy the 6 tests for conditions and would neither be reasonable nor necessary in the interests of safeguarding the character and appearance of the area. The

condition would therefore conflict with paragraph 55 of the National Planning Practice Guidance.

Other Matters

11. I have had regard to the various submissions of the Council and appellant regarding the impact of the display of an advertisement on the site on the character and appearance of the area. However, I have drawn my conclusions on the reasonableness and necessity of the imposition of the condition as set out, and therefore these submissions have not had any bearing on my decision-making in this instance.

12. I have also had regard to the concerns of an interested party as expressed in correspondence received during the course of the planning appeal related to the impact of the erection of a wooden fence at the appeal property, as well as a perceived departure from the approved layout of the cattery. However, these are not matters which have any bearing on my decision-making with regards the appropriateness of the condition, and I have not attached any weight to the concerns which would appear to be issues for the Council's attention.

Conclusion

13. For these reasons, I am satisfied that the disputed condition is neither reasonable nor necessary, and that the planning permission should be varied as set out in the formal decision.

Martin Seaton

INSPECTOR